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No. 82-385

In the Supreme Court of the United States

October Term, 1982

HELEN B. O'BANNON et al.,
Petitioners

v.

JACK SHADIS et al.,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONERS' REPLY BRIEF

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ARGUMENT

I. This Case Remains of Current Importance to the Administration of State Funded Legal Service Programs

Respondents argue that a grant of certiorari would be pointless because the Commonwealth of Pennsylvania now seeks its original objectives by statute rather than by contract. Respondents' Brief at 3. They are referring to Act No. 1981-5A which appropriated state funds for legal services for the 1981-82 fiscal year that ended June 30, 1982. It said:

> For legal services 1,250,000
>
> Provided that any award of attorney's fees from any Commonwealth agency or official to a legal service provider supported in whole or in part directly or by contract under this appropriation shall be paid exclusively from this appropriation.

The year to which the statute applied has now ended. No similar statute was enacted for fiscal year 1982-83, in fact, no specific appropriation for legal services was made at all. Legal services are still being funded by the Department of Public Welfare through a contract with Pennsylvania Legal Services Center, Inc. This contract contains a clause stating:

> The contractor and subcontractors may not accept attorneys fees in any cases brought against the Commonwealth or Commonwealth employees.

Thus, the issues raised by the petition here remain of current importance to the administration of social service programs in Pennsylvania.

II. The District Court Neither Had Nor Expressed Any Grounds for an Award of Fees That Would Not Have Been Barred by the Contracts

Respondents claim that the district court was ready to award fees to CLS regardless of any contract law analysis. Respondents' Brief at 9. However, they cite no language from the district court opinion to support this claim, and none can be found. More importantly, the district court had no grounds for awarding fees other than the Attorneys Fees Awards Act. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975), held that the courts had no general equitable power to award fees and could award them only in limited circumstances, none of which were urged or considered here. And even if the court did have such power, it still would have had to determine whether the contracts were a valid waiver of the right to request or benefit from an exercise of that power. Thus, the validity of the contracts remains the dispositive issue in this case.

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